

# 2019: a Changed Climate

verfassungsblog.de/2019-a-changed-climate/

Maximilian Steinbeis Fr 20 Dez  
2019

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The editors of Verfassungsblog wish all readers happy holidays and a great new year! (Foto: Maurice Weiß/Ostkreuz)

At the end of this eventful year 2019, you won't expect me to indulge in seasonal sentimentality, I hope. Walking in a winter wonderland is not what is prominently on my mind right now, and that's not just because it's been well over 10° C in Berlin for days. In **Poland**, the governing PiS party is throwing any residual semblance of EU law abidance out of the window with its new legal threats against judges who follow the ruling of the ECJ and the Polish Supreme Court. (There seem to be some last-minute efforts to water the draft law down thanks to one of the coalition partners of PiS, though. More on this on these pages soon). In the **UK**, the victorious Tory government under Boris Johnson sets out to change the balance between the legislative and the judicial branch on the one hand and the executive branch of government on the other in the most momentous manner. And in **India**, the Hindu nationalist government apparently prepares to strip millions of Muslim Indians of their citizenship while the protests that have erupted all over the country are struck down with unrestrained violence and the constitutional institutions are mostly just standing by and watching.

All three examples have in common the utter uselessness of the opposition. It's not that there is none. There is. It's alive and kicking, it's right there in Parliament, squealing and squeaking every now and then. But it appears completely unable to make any difference.

It doesn't manage to position itself as a clear antipole to the government in the ongoing fight for the constitution. Why that is so, why it is so hard to have a polarized debate about matters constitutional in the moment of greatest need, is one of the things I have as yet failed to understand. Maybe I will in 2020.

## Topics of 2019

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Anyway, it's still 2019, and this is the last editorial before our seasonal break. For my retrospection, I have analyzed what you, readers of Verfassungsblog, have found most interesting. Here are the posts, month by month, which have been read most:

**January:** I report of the hearing before the German Federal Constitutional Court about whether social aid may fall below the **minimum of existence** if the recipient fails to behave. A law about **equal representation of genders in state parliament** in Brandenburg raises much alarm, and so does CARA RÖHNER's thesis to rethink equal representation as not just formal but material. The FCC in Karlsruhe is unwilling to admit a complaint by the far-right AfD against what they liked to call the "**rule of lawlessness**" in the refugee crisis of 2015/16, a decision which MATHIAS HONER considers correct.

**February:** more about **equal representation in parliament** – the Brandenburg law is considered unconstitutional by MONIKA POLZIN. And HOLGER HESTERMEYER interprets the **Brexit chaos in the UK** as a constitutional crisis.

**March:** School or **Fridays for Future**? Compulsory school attendance or freedom of assembly? FELIX HANSCHMANN weighs the proportionalities. The German Länder want to fight crime in the so-called **dark net** which is met with scepticism by MATTHIAS BÄCKER and SEBASTIAN GOLLA. The German "Great Coalition" decides against abolishing the crime of "**promoting abortion**" (§ 219a StGB), and ALEXANDER THIELE doesn't think that a lawsuit in Karlsruhe would help.

**April:** In Berlin there are ideas about **expropriating residential real estate owners** which, according to MAXIMILIAN PICHL, would be a lot less unconstitutional than many think. The *Bundestag* fails to **reform of the Federal Election Act** another time, and SOPHIE SCHÖNBERGER has enough: the German system of personalised proportionality may have run its course.

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Im Rahmen des von der Hans-Böckler-Stiftung eingerichteten Kollegs, in dessen Zentrum die Suche nach den normativen Grundlagen der Tarifautonomie steht, sind acht Stipendien zu vergeben. Gefördert werden neben Vorhaben mit einem privatrechtlichen Zugang auch solche aus den Bereichen des Verfassungsrechts und der Sozialwissenschaften.

Weitere Informationen und eine Ausschreibung finden Sie [hier](#).



**May:** On the AfD list for the EP elections, there is a fake professor – [my editorial](#) on the would-be "**Prof. Dr. Gunnar Beck**" is a proper scoop and causes quite a riot not only at Beck's university, notoriously leftie SOAS in London. **Wojciech Sadurski** is facing trial in Warsaw for allegedly having "insulted" the PiS party, and [GRÁINNE DE BÚRCA](#) and [JOHN MORIJN's](#) open letter of solidarity is signed by more than 700 scholars from all over the world. In Austria, the center-right/far-right government is blown up by the **Ibiza video**, and [MATHIAS HONG](#) examines the limits of fundamental rights protection of illegally obtained information.

**June:** The **protests in Hong Kong** start, and ALBERT CHEN's piece on the political and legal background is the most-read article this month. NELE MATZ-LÜCK explains what international law has to say about maritime rescuing obligations in the **Mediterranean Sea**. France wants to ban **research about judicial behaviour**, much to the alarm of MALCOLM LANGFORT and MIKAEL RASK MADSEN.

**July:** The AfD list is not admitted to the election in Saxony. SOPHIE and CHRISTOPH SCHÖNBERGER find this **decision by the Saxon electoral committee** incomprehensible, brushing against the political grain of the moment – by far the most-read post of 2019. Also very strong in July: PETER VAN ELSUWEGE's post about the **Catalan separatists** among the newly elected MEPs who are hindered by Spanish law to take their seats in Strasbourg – unlawfully so, as the ECJ this week ultimately decided. And CHRISTOPHER HEIN's argument why **SeaWatch captain Carola Rackete** has not violated Italian criminal law in her run-in with Matteo Salvini, then Home Secretary of Italy.

**August:** The second most-read post of 2019 is the solution for the **Brexit dilemma** offered by JOSEPH H.H. WEILER, DANIEL SARMIENTO and JONATHAN FAULL to the negotiation partners on both sides of the Channel on Verfassungsblog. RONI DEGER's analysis if the *Bundestag* could lawfully deny the AfD a decision if the **necessary quorum of members** are present to enact laws is equally met with great interest.

**September:** The third most-read post of 2019 is my doom-and-gloom scenario about how a **populist majority in Germany** could virtually turn the entire constitutional order of the *Grundgesetz* upside down within one legislative term. ANDREAS FISCHER-LESCANO's warning of the **far-right in legal science** makes a big splash, too.

**October:** RALF MICHAELS is unconvinced by game theory attempts to rationalize Boris Johnson's **Brexit strategy**. INGOLF PERNICE collects signatures for a call of support for Emmanuel Macron's beleaguered Commission candidate **Sylvie Goulard**, ultimately unsuccessfully though. PIET EECKHOUT comes to the conclusion in the **stand-off between Parliament and Government in the UK** about the Brexit deal that the EU would be legally bound to grant another extension of the deadline.

**November:** Wojciech Sadurski's trial in Warsaw starts, and once again the global constitutionalist community shows strong support by signing the **#WithWoj** call by GRÁINNE DE BURCA, JOHN MORIJN and your's truly. ALEXANDER THIELE's thoughts about the existential minimum decision by the FCC (see January) is also read by a well above average number of people. TOBIAS GAFUS polemicises against the growing trend in Germany to disregard court orders, shown by the Bavarian prime minister Markus Söder among others (this has also been decided upon by the ECJ this week).

**December** has not ended yet, but as of today the most-read post this month is MICHAEL WILKINSON's accusation of the left in Britain and its failure to come to terms with Brexit. IBRAHIM KANALAN's analysis of the ECJ decision on the minimum of existence and SÉBASTIEN PLATON's call to involve the ECJ in the Brexit deal were also read by many.

## Militant or defenseless democracy

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The two latter posts were of this week, and we'll see what this month still has in stock for us. A peace- and uneventful holiday season doesn't appear all that likely, with all the momentous decisions the ECJ alone has presented us with this Thursday. So, what else was going on this week?

It is still unclear how far the Tories will go after their stunning victory at the General Elections in **UK** with the renovation of the British constitution, but they have made abundantly clear that there will be one: ALISON YOUNG has analyzed the signs and leads and foresees a rather gloomy scenario. As far as Brexit is concerned, Boris Johnson wants to legally exclude any extension of the transition period beyond 31 December 2020. For the EU side, any alteration of the deal must nevertheless stay possible under international law, argues RENÉ REPASI.

Largely unnoticed, a new state has emerged in the South Pacific with the isle of **Bougainville** which has split off the state of Papua New Guinea in a referendum. KARL KÖSSLER reports.

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In **Slovakia**, one right-wing extremist MP was expelled from Parliament on account of hate speech and another has taken his place, which, according to MAX STEUER, can be seen as evidence of either democratic armament or disarmament.

In **Italy**, the Constitutional Court has declared life imprisonment without parole unconstitutional, but without sufficiently addressing the requirements of the ECHR, as ALESSANDRO ROSANÒ criticises.

In **Germany**, the judiciary is targeting also the lawyers who came up with the billion-euro tax trickery which has become notorious under the name of "Cum-Ex". ANNIKA DIEßNER sees both a questionable actionism at work in the judiciary and signs of a systematic undesirable development in the legal profession.

**Tanzania** is blocking its citizens from access to the African Court of Human Rights. This is a serious setback for human rights protection in Africa, as ROMY KLIMKE notes.

Jan-Werner Müller's new book on "**Liberalism of Fear**" tickles the humour of our reviewer ALEXANDER SOMEK.

This year was full of big-0 anniversaries, among them 30 years of the **Round Table** negotiations in Central and Eastern Europe. Many of the countries which benefited of this institution in 1989 are today among those where democracy, the rule of law and constitutional legality now seem acutely threatened. This is reflected in an online symposium we have organized together with the WZB Center for Global Constitutionalism, introduced by KRISZTA KOVÁCS and with contributions from ANDREW ARATO, KAROLINA WIGURA, PETRA GÜMPLOVÁ, CHRISTIAN BOULANGER, MICHAEL MEYER-RESENDE and GÁBOR ATTILA TÓTH.

## Elsewhere

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NEIL H. BUCHANAN is trying not to lose hope in the face of the Republicans' refusal in the **US** Senate to assume their constitutional responsibilities in the impeachment proceedings against President Trump.

In his review of the year, DANIEL SARMIENTO celebrates the remarkable series of landmark rulings delivered by the **ECJ** in 2019.

AURÉLIEN ANTOINE finds the British Constitution adaptable and resilient enough for the Johnson era, but is concerned about the territorial unity of the **United Kingdom**.

FACUNDO CRUZ believes that the future belongs to coalition governments and that in this respect the world can once again learn from **Scandinavia**.

ELINA NIEMINEN reports on a judgment of the ECtHR against **Finland** concerning the deportation of an Iraqi refugee who was shot dead in Iraq shortly afterwards.

FRANZ CHRISTIAN EBERT and LUIZA SOARES MARIANO COSTA describe the fight against the still existing slavery in **Brazil** and the role of the Inter-American Court of Human Rights in this.

That's all, I guess – not just for this week, but for this year. I will report back to duty in January. Meanwhile, if you feel that you have not yet given away enough Christmas presents, I would bashfully raise my finger and point out this wonderful opportunity here.

Happy holidays and a great 2020 to all of you! See you back here next year!

Max Steinbeis





## While you are here...

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All the best, *Max Steinbeis*

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